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the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Fifty-eighth session
6-23 March 2001

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Concluding observations of the Committee on the Elimination of Racial Discrimination

JAPAN

1. The Committee considered the initial and second periodic reports of Japan, which were due on 14 January 1997 and 14 January 1999, respectively, submitted in one document (CERD/C/SR.1443 and 1444), at its 1443rd and 1444th meetings held on 8 and 9 March 2001. At its 1459th meeting (CERD/C/SR.1459) held on 20 March 2001, it adopted the following concluding observations.

A. Introduction

2. The opportunity to initiate a constructive dialogue with the State party is particularly welcome. The Committee was encouraged by the attendance of a large delegation representing a wide range of governmental departments and also by the involvement of the non-governmental community, as acknowledged by the State party, in the preparation of its initial report.

3. The Committee welcomes the detailed and comprehensive report submitted by the State party, prepared in accordance with its guidelines for the preparation of reports, and the additional oral information provided by the delegation in response to the wide range of questions asked by Committee members. It also welcomes the additional written responses provided following the examination of the report.

B. Positive aspects

4. The Committee welcomes the legislative and administrative efforts made by the State party in order to promote the human rights and the economic, social and cultural development of some ethnic and national minorities, in particular (a) the 1997 Law for the Promotion of Measures for Human Rights Protection; (b) the 1997 Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture; and (c) the series of Special Measures Laws for Dowa projects with the aim of eliminating discrimination against Burakumin.

5. The Committee notes with interest the recent jurisprudence recognizing the Ainu people as a minority people with the right to enjoy its unique culture.

6. The Committee welcomes efforts made to raise awareness about existing human rights standards, particularly the publication of the full texts of fundamental human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, on the Web site of the Ministry for Foreign Affairs. It also welcomes the similar dissemination of the State party's reports on the implementation of treaties and the concluding observations of the respective treaty monitoring bodies.

C. Concerns and recommendations

7. While taking note of the State party's point of view on the problems involved in determining the ethnic composition of the population, the Committee finds that there is a lack of information on this point in its report. It is recommended that the State party provide in its next report full details on the composition of the population, as requested in the reporting guidelines of the Committee, and, in particular, information on economic and social indicators reflecting the situation of all minorities covered by the Convention, including the Korean minority and the Burakumin and Okinawa communities. The population on Okinawa seeks to be recognized as a specific ethnic group and claims that the existing situation on the island leads to acts of discrimination against it.

8. With regard to the interpretation of the definition of racial discrimination contained in article 1 of the Convention, the Committee, unlike the State party, considers that the term "descent" has its own meaning and is not to be confused with race or ethnic or national origin. The Committee therefore recommends that the State party ensure that all groups including the Burakumin community are protected against discrimination and afforded full enjoyment of the civil, political, economic, social and cultural rights contained in article 5 of the Convention.

9. The Committee notes with concern that although article 98 of the Constitution provides that treaties ratified by the State party are part of domestic law, the provisions of the Convention have rarely been referred to by national courts. In light of the information from the State party that the direct application of treaty provisions is judged in each specific case, taking into consideration the purpose, meaning and wording of the provisions concerned, the Committee seeks clarification from the State party on the status of the Convention and its provisions in domestic law.

10. The Committee is concerned that the only provision in the legislation of the State party relevant to the Convention is article 14 of the Constitution. Taking into account the fact that the Convention is not self-executing, the Committee believes that it is necessary to adopt specific legislation to outlaw racial discrimination, in particular legislation in conformity with the provisions of articles 4 and 5 of the Convention.

11. The Committee notes the reservation maintained by the State party with respect to article 4 (a) and (b) of the Convention, stating that "Japan fulfils the obligations under those provisions to the extent that fulfilment [...] is compatible with the guarantee of the rights to freedom of assembly, association and expression and other rights under the Constitution of Japan". The Committee expresses concern that such an interpretation is in conflict with the State party's obligations under article 4 of the Convention. The Committee draws the attention of the State party to its General Recommendations VII (32) and XV (42), according to which article 4 is of mandatory nature, given the non-self-executing character of all its provisions, and the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the rights to freedom of opinion and expression.

12. Regarding the prohibition of racial discrimination in general, the Committee is further concerned that racial discrimination as such is not explicitly and adequately penalized in criminal law. The Committee recommends that the State party consider giving full effect to the provisions of the Convention in its domestic legal order and ensure the penalization of racial discrimination, as well as the access to effective protection and remedies through the competent national tribunals and other State institutions against any acts of racial discrimination.

13. The Committee notes with concern statements of a discriminatory character made by high-level public officials and, in particular, the lack of administrative or legal action taken by the authorities as a consequence, in violation of article 4 (c) of the Convention, and the interpretation that such acts can be punishable only if there is an intention to incite and promote racial discrimination. The State party is urged to take appropriate measures, in compliance with article 7 of the Convention, to prevent such incidents in the future and to provide appropriate training of, in particular, public officials, law enforcement officers and administrators with a view to combating prejudices which lead to racial discrimination.

14. The Committee is concerned about reports of violent actions against Koreans, mainly children and students, and about inadequate reaction on the part of the authorities in this regard and recommends that the Government take more resolute measures to prevent and counter such acts.

15. With regard to children of foreign nationality residing in Japan, the Committee notes that elementary and lower secondary education is not compulsory. It further notes the position of the State party that "since the purpose of the primary education in Japan is to educate the Japanese people to be members of the community, it is not appropriate to force foreign children to receive that education". The Committee concurs with the proposition that force is completely inappropriate to secure the objective of integration. However, with reference to articles 3 and 5 (e) (v), the Committee is concerned that different standards of treatment in this respect

may lead to racial segregation and the unequal enjoyment of the rights to education, training and employment. It is recommended that the State party ensure that the rights contained in article 5(e) are guaranteed without distinction as to race, colour, or national or ethnic origin.

16. The Committee is concerned about discrimination affecting the Korean minority. Though efforts are being made to remove some of the institutional obstacles preventing minority students from international schools, including Korean schools, from entering Japanese universities, the Committee is particularly concerned that studies in Korean are not recognised and that resident Korean students receive unequal treatment with regard to access to higher education. It is recommended that the State party undertake appropriate measures to eliminate discriminatory treatment of minorities, including Koreans, in this regard and to ensure access to education in minority languages in public Japanese schools.

17. The Committee recommends that the State party take steps to further promote the rights of the Ainu, as indigenous people. In this regard the Committee draws the attention of the State party to its General Recommendation XXIII (51) on the rights of indigenous peoples that calls, inter alia, for the recognition and protection of land rights as well as restitution and compensation for loss. The State party is also encouraged to ratify and/or use as guidance the Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of the International Labour Organization.

18. Noting that although there are no longer any administrative or legal requirements for Koreans applying for Japanese nationality to change their names to a Japanese name, the Committee expresses its concern that authorities reportedly continue to urge applicants to make such changes and that Koreans feel obliged to do so for fear of discrimination. Considering that the name of an individual is a fundamental aspect of the cultural and ethnic identity, the Committee recommends that the State party take the necessary measures to prevent such practices.

19. The Committee, while noting the recent increase in the number of refugees accepted by the State party, is concerned that different standards of treatment are applicable to Indo-Chinese refugees, on one hand, and the limited number of refugees of other national origins, on the other. Whereas Indo-Chinese refugees have access to accommodation, financial aid and State-funded Japanese language courses, such assistance is as a rule not available to other refugees. The Committee recommends that the State party take the necessary measures to ensure equal entitlement to such services by all refugees. In this context, it is also recommended that the State party ensure that all asylum-seekers have the right, inter alia, to an adequate standard of living and medical care.

20. The Committee is concerned that the national redress law offers remedies only on the basis of reciprocity, which is inconsistent with article 6 of the Convention.

21. The Committee requests the State party to provide in subsequent reports, inter alia, jurisprudence relating specifically to violations of the Convention, including the awarding by courts of adequate reparation for such violations.

22. The Committee recommends that the next State party report contain socio-economic data disaggregated by gender and national and ethnic group and information on measures taken to prevent gender-related racial discrimination, including sexual exploitation and violence.

23. The State party is also invited to provide in its next report further information on the impact of: (a) the 1997 Law for the Promotion of Measures for Human Rights Protection and the work and powers of the Council for Human Rights Promotion; (b) the 1997 Law for the Promotion of the Ainu Culture and for the Dissemination and Advocacy for the Traditions of the Ainu and the Ainu Culture; and (c) the Law concerning Special Government Financial Measures for Regional Improvement Special Projects and envisaged strategies to eliminate discrimination against Burakumin after the law ceases to apply, i.e. in 2002.

24. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and the Committee recommends that the possibility of making such a declaration be considered.

25. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention.

26. The Committee recommends that the State party's reports continue to be made readily available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized.

27. The Committee recommends that the State party submit its third periodic report jointly with its fourth periodic report, due on 14 January 2003, and that it address all points raised in the present observations.